

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

ALEC FABER, individually and on behalf of
all others similarly situated; and **AHNAF
RAHMAN**, individually and on behalf of all
others similarly situated,

Plaintiffs,

No. 3:20-CV-0467 MAD/ML

v.

CORNELL UNIVERSITY,

Defendant.

Defendant Cornell University (“Cornell”) respectfully submits this status report pursuant to the Court’s June 29, 2021 Order.

Plaintiffs and Cornell (collectively “the Parties”) last appeared before the Court on June 29, 2021. At that status hearing, the Court directed the parties to file status reports, jointly or separately, by August 5, 2021.

A. Pending Motions

1. On March 17, 2021, Defendant filed its motion for partial reconsideration of the order on its Motion to Dismiss. That motion was fully briefed as of April 12, 2021, no oral argument has been conducted, and the motion remains pending at this time. The scope of discovery is currently uncertain given the pendency of the motion, which is potentially dispositive of several substantive issues in the action. There are no other pending motions.

B. Agreed Protective Order and ESI Protocol

2. During the parties’ Rule 26(f) conference on March 25, 2021, the parties agreed that they would jointly seek an appropriate Protective Order in this matter.

3. Cornell's counsel prepared a draft Confidentiality Stipulation and Protective Order and shared it with Plaintiffs' counsel on May 3, 2021, and followed up for Plaintiffs' comments, if any, on June 14, June 29, and July 7. Plaintiffs provided comments on July 7, and the proposed order was finalized on July 30, 2021. An executed copy is attached as **Exhibit A** to this Report.

4. Pursuant to the Federal Rules of Civil Procedure and this Court's local rules, Cornell respectfully requests that the Court enter the proposed agreed Protective Order to govern this action.

5. The parties have also reached an agreed ESI protocol. Cornell does not believe there is a need to enter that agreement as an order at this time.

C. Status of Written Discovery From Cornell and Cornell's Objections

6. Following agreement between the parties on the Protective Order and an ESI protocol, Cornell produced an initial set of documents on August 5, 2021. After entry of the Protective Order, Cornell expects to make additional productions over the coming months.

7. During the June 29, 2021 status conference, Cornell informed the Court that Cornell had raised several significant objections to Plaintiffs' document requests, including to items such as the appropriate time frame for discovery materials and to requests that were overly burdensome, unnecessary, and/or irrelevant. Cornell had offered to Plaintiffs to meet and confer on its objections, but as of that conference had not received a response from Plaintiffs. Cornell explained that it did not want to engage in costly discovery without having a better understanding of its discovery obligations, which could not happen without this meet and confer. The Court encouraged Plaintiffs to promptly raise any issues with Cornell's objections, which Plaintiffs said it would do within a week or two of the hearing.

8. Plaintiffs have not raised any concerns with Cornell's objections since the status conference, so Cornell is now proceeding with its collection and production efforts pursuant to its objections. It is Cornell's position that it may rely on these objections as they currently stand.

D. Status of Written Discovery From Plaintiffs and Plaintiffs' Objections

9. On May 10, 2021, Defendant propounded its first set of interrogatories on Plaintiffs. Plaintiffs' responses were due by June 14, 2021. On June 16, 2021, Plaintiffs belatedly requested an extension, to which Cornell agreed, making those responses due on July 14, 2021. On July 13, 2021, Plaintiffs requested a second extension, to which Cornell again agreed. Plaintiffs served their interrogatory responses on July 21, 2021.

10. As of August 5, 2021, Plaintiffs have not supplemented their document production.

11. Cornell is preparing a request for a meet and confer with Plaintiffs to discuss deficiencies in their discovery responses and objections.

E. Mediation

12. Mediation is currently scheduled to occur via Zoom on August 18, 2021. Judge Randolph Treece will serve as mediator.

F. Proposed Case Schedule Amendments

13. Cornell does not believe that the current case schedule in this putative class case is achievable in light of the significant delays to the agreed Confidentiality Order and ESI Protocol, ongoing written and oral discovery, and the pending motion for reconsideration, which could significantly impact the scope of the action.

14. For example, Plaintiffs' expert reports are due in approximately two months; however, neither party has substantially completed written and document discovery, and no depositions have been scheduled, let alone completed.

15. Defendants respectfully suggest extending the existing deadlines by three months, and the deadline for dispositive motions by nine months to accommodate a ruling on class certification:

	Current Deadline	Cornell Proposed Deadline
Mediation Deadline	September 13, 2021	No change
Plaintiffs' Expert Report	October 11, 2021	January 11, 2022
Defendant's Expert Report	November 23, 2021	February 23, 2022
Class Certification Motion	December 3, 2021	March 3, 2022
Rebuttal Expert Reports	December 8, 2021	March 8, 2022
Close of Discovery	January 7, 2022	April 7, 2022
Dispositive Motions	February 7, 2022	November 7, 2022

Dated: August 5, 2021

Respectfully Submitted,

/s/ Paul B. Rietema

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Counsel for Defendant

CERTIFICATE OF SERVICE

I, Paul B. Rietema, certify that on August 5, 2021, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will then send a Notice of Electronic Filing to all counsel of record.

/s/ Paul B. Rietema

Paul B. Rietema